

From: Will Berry
To: Microsoft ATR
Date: 1/23/02 3:44pm
Subject: Microsoft Settlement

To whom it may concern,

My name is Will Berry and I am a natural-born US citizen from Atlanta GA. The purpose of this e-mail is to contribute my comments on the proposed settlement between Microsoft Corporation and the US Department of Justice, pursuant to the Tunney Act. I am not pleased at all with the terms of the proposed settlement. I believe the proposed settlement is in effect a license for Microsoft to continue to break the law.

Thanks to the efforts of the DOJ, many States, and others, Microsoft has been found by the courts to be a predatory monopolist with no regard for responsible behavior in a competitive market. Microsoft has done severe, if not irreparable, damage to the operating system and browser markets.

They have strong-armed their operating system distributors, similarly to the offenses of Standard Oil with the railroad companies, coercing them not to sell competing operating systems, or forcing them to pay for MS Windows even if the computer does not ship with MS Windows. (This practice has even become known in high-tech culture as the "Microsoft Tax".) They have strong-armed Apple Computer and others by influencing which features and software are included in their products, to the inherent harm of the consumer.

And this is a telling thing: they continue to deny that they have done anything wrong. As Microsoft has demonstrated over and over again, they will be exactly as responsible in the market as the government forces them to be, not a bit more. Microsoft must be held accountable for its actions. Let me be clear: Microsoft will not stop breaking the law until and unless they are *punished*. This proposed settlement will not punish Microsoft; it will enable them.

The "Technical Committee" provided for in the settlement is a farce. Why would Microsoft choose one of the three members? Why would the committee not have power to enforce the settlement or levy fines, as opposed to simply monitoring the situation? The details of this arm of the proposed settlement are riddled with flaws. If the court accepts this, then the committee will become a shield for Microsoft when (I do not say 'if') Microsoft continues its illegal business practices. After all, if the committee approves.... This is not punishment; it is government endorsement of Microsoft's behavior.

The settlement allows Microsoft to withhold technical information from any individual or organization, as long as they say they do not certify the "authenticity and viability of its business". This is a gaping loophole, allowing Microsoft to continue its old practices by labeling its products and other organizations differently. Furthermore, when Microsoft continues its illegal acts, it will be harder to sue them because they will be abiding by the settlement agreement! This is not punishment. It is government approval to break the law.

Why does the settlement not force divestiture of certain Microsoft ventures? Why does the settlement not fine Microsoft one red cent? Why is the Technical Committee not allowed to disclose its findings to the public? Why does the settlement not punish Microsoft? Why do you think Microsoft is so happy about the settlement?

If you ask me, the Windows and Office divisions of Microsoft should both be ordered divested, and no Microsoft employees or board members or their families should be allowed to manage or serve on the boards of the new companies or own more than 0.1% of their stock for twenty years. Failing that, Microsoft should at the very least be fined half of its gross revenue for the next ten years. That would at least be punishment. At least that would cause them to think twice about repeating their egregious abuses of our free market economy.

Think for a moment on Microsoft's "warnings" of what would happen should actual punishment be levied against them. They say the market will suffer if they are punished. Even if their predictions are true, which I doubt, is this not an implicit admission of their pestilence? For Microsoft IS the market, and therefore to punish Microsoft is to directly damage the market. Or at least they say so. This is all the more reason to punish them harshly, and allow the market to repair itself. After all, they did break the law.

This nation passed Anti-Trust legislation to prevent exactly this sort of phenomenon from occurring. Standard Oil was damaging its market, and in doing so was damaging the entire nation's economy. Microsoft is following in its footsteps; the courts have found this to be true. The Sherman Act was passed because the free market itself cannot repair this kind of damage; the government must intervene to keep the market healthy. Microsoft's behavior cannot continue!

I say to the Courts, to the States, and to the Department of Justice: Do not let Microsoft get stinking rich from their illegal, atrocious business practices. Do not let crime pay for them. This responsibility falls squarely on your shoulders; the public is depending on you to protect us from these predators. Do your job; reject this settlement!

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